

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IDAHO POWER COMPANY,)	
)	CASE NO. IPC-E-04-4
Complainant,)	
)	
v.)	
)	
CITY OF EAGLE, IDAHO,)	ORDER NO. 29634
)	
Respondent.)	
)	

On February 11, 2004, Idaho Power Company filed a Complaint against the City of Eagle requesting that the Commission authorize the utility to construct a new 138-kV transmission line from the Eagle substation to a new substation in Star, Idaho by either of two proposed routes. Idaho Power filed its Complaint after the City had denied two Idaho Power applications for conditional use permits (CUPs) seeking permission to build the line. The Commission held a prehearing conference attended by counsel for the City, Idaho Power and the Commission Staff. Based upon the agreement of the parties, the Commission set this matter for hearing.

On September 9, 2004, the Commission held a technical hearing followed by a public hearing. At the public hearing two members of the Eagle City Council asked the Commission to consider an alternative route for the new transmission line. The Commission directed the parties to explore the alternative and report their findings to the Commission. On November 16, 2004, the parties filed a Joint Motion requesting the Commission approve a Settlement Stipulation that included an agreed to alignment for the transmission line. The parties maintain that the Stipulation is in the public interest and urge the Commission to approve the comprehensive settlement without further delay. Based upon our review of the record and the terms of the Settlement Stipulation, the Commission approves the Settlement resolving this case.

BACKGROUND

A. The Complaint

The events leading up to Idaho Power's complaint are set out in Order No. 29444 but the pertinent points are summarized here. Beginning in December 2000, Idaho Power sought

approval of two different conditional use permits (CUPs) to construct a new 138-kV transmission line¹ through the City of Eagle from near the existing Eagle substation to a new substation located east of Star. In its initial CUP request, the Company sought an exception to the City's zoning ordinance that limits the height of utility poles to 35 feet. Eagle Ord. § 8-2A-6(A)(7)(a). Idaho Power initially proposed that the new line follow an existing 69-kV transmission line along State Street to the Star substation. After the City's Planning and Zoning Commission (P&Z) recommended denial of the CUP in early 2001, Idaho Power formed a Community Advisory Committee (CAC or Committee) at the suggestion of the Eagle City Council to look at other routes.

Idaho Power and the CAC held a number of open houses and evaluated as many as 16 different routes for the new transmission line. The Committee initially recommended that the new transmission line be constructed underground through the City. When the CAC learned that burying the lines would cost approximately \$5-6 million more than an overhead line and that Idaho Power would insist that the additional costs be borne by the City's customers, the CAC concluded that this was not a viable option under these conditions. The Committee subsequently recommended a route that would generally follow the Eagle By-pass designated as State Highway 44.

In September 2002, Idaho Power filed another CUP requesting authority to build the new transmission line along the Committee's recommended By-pass route using steel poles with heights ranging from 70-85 feet. Idaho Power Exh. 3 at 2. In September 2003, P&Z recommended the City deny the second CUP. Subsequent meetings between Idaho Power and City officials in early 2004 examined six routing alternatives but no agreement was reached. In February 2004, Idaho Power filed the present complaint. In March 2004, the City Council denied Idaho Power's 2002 CUP to build the line along the By-pass route.

B. Procedural History

Given the unique nature of this case, the Commission scheduled a prehearing conference so the parties could discuss and recommend to the Commission how this matter should be processed. Order No. 29444. Idaho Power, the City, and the Commission Staff proposed that the Commission schedule a technical hearing to receive testimony from the

¹ The 138-kV transmission "line" is actually made up of three conductor lines and a "shield" line at the top of the pole that protects the three conductors from a lightning strike.

parties' witnesses and a public hearing to take testimony from members of the public. Based upon the agreement of the parties, the Commission set this matter for hearing. Order No. 29465. On June 29, 2004, Eagle River LLC (the developer of a large property parcel located on the southeast corner of Eagle Road and the By-pass) requested to intervene. In Order No. 29543, the Commission granted Eagle River intervenor status.

At the technical hearing, all the parties presented witnesses and supporting exhibits.² Idaho Power presented two witnesses that addressed the need for the new line, its two alternative proposed routes (State Street and the By-pass), and the disadvantages of burying the transmission line. The Commission Staff generally supported the Company's position. The City presented three witnesses that asserted the new line was not necessary and that an aerial line would decrease property values. They contended that if a new line was necessary, the line should be buried. They also argued the additional cost of burying the line should be recovered from all Idaho Power ratepayers, not just from Eagle customers. Eagle River's witness testified that if the new transmission line was built along the By-pass, it would be detrimental to the value of Eagle River's development.

At the public hearing, the Commission received testimony from 17 witnesses including two members of the Eagle City Council. In their testimony, the Council members urged the Commission to evaluate an alternative route that would follow a southwesterly direction through Eagle's Central Business District to the By-pass west of the Eagle Road intersection. Tr. at 438; City Exh. 106. They testified this alternative alignment avoids the City's residential areas and would, therefore, not adversely affect residential property values. They also suggested that the alternative alignment would not adversely affect commercial property values along the By-pass. Finally, this new alignment would preserve scenic views along State Street, Jackson Square, and the gateway intersection of the By-pass and Eagle Road. Tr. at 437, 508.

Based upon this testimony, the Commission directed the parties to examine the alternative alignment and advise the Commission whether such an alignment presents a reasonable alternative to either the State Street or By-pass routes. On September 22, 2004, the parties advised the Commission that they were looking at two alternatives commonly referred to

² Just prior to the technical hearing, the City filed a Motion for the Commission to dismiss Idaho Power's complaint. Given the parties' Settlement Stipulation, we need not address the issues raised in that Motion.

as: (1) the Alley-Eagle Road route; and (2) the Second Street-Plaza route. On November 16, 2004, the parties filed a Settlement Stipulation agreeing to the Alley-Eagle Road aerial alignment.

THE PROPOSED SETTLEMENT

All the parties agreed with the Settlement Stipulation. In their Stipulation, the parties agreed that the alignment for the 138-kV transmission line should follow the Alley-Eagle Road route. More specifically, the new line would cross State Street and enter the Eagle substation. From the southern portion of the Eagle substation, the line would follow the alley south of State Street to Eagle Road. From the corner of the alleyway and Eagle Road, the line would extend south on the east side of Eagle Road past Plaza Street. The line would then cross Eagle Road and continue along the northern portion of property developed by Zamzow's at the northwest corner of Eagle Road and the By-pass. The line would cross the By-pass and continue westward along the south side of the By-pass to the City limits and on to the Star substation. The proposed alignment is illustrated in Exhibit 1 to the Settlement Stipulation.

Existing poles in the alleyway and on the east side of Eagle Road will be removed and replaced with wood or "corten" poles.³ The new pole in the rear of the substation, and the poles along the alleyway to Eagle Road will be the minimum height necessary to meet safety clearance requirements. IDAPA 31.11.01.101. The corner pole at the alley and Eagle Road shall be a corten pole because this pole must accommodate the existing overhead distribution lines and facilities, as well as non-Idaho Power aerial lines (cable and telephone) in the alleyway. These poles will not exceed 84 feet in height. Stipulation at ¶¶ 3-5.

The parties agree that the existing aerial distribution circuit located on the east side of Eagle Road will be removed and buried. The parties also intend that non-Idaho Power facilities along the east side of Eagle Road will be removed and buried. *Id.* at ¶ 8. Burying the distribution line will allow Idaho Power to use shorter poles for the transmission lines. In particular, the height of the wood poles on Eagle Road will decrease from the alleyway to a height of 63 feet above grade at the southernly point where the transmission line will cross Eagle Road. This latter wood pole will be stabilized with guy-wires. *Id.* at ¶ 5.

Once the line crosses Eagle Road, one corten pole not exceeding 63 feet in height will be located on the Zamzow easement generally in the center of the northern property line.

³ A "corten" pole is a multi-faceted steel pole made of a material that has the appearance of wood.

This corten pole is needed for strength and will have a maximum base diameter of 48 inches. The line will cross the By-pass and continue westerly on wood poles not exceeding 64.5 feet in height. *Id.* at ¶¶ 6-7.

The parties have agreed that the cost of burying the distribution line on the east side of Eagle Road will be paid by the City. The cost is estimated to be approximately \$300,000. *Id.* at ¶ 9. The City further agrees to pay Idaho Power either the Company's estimated work order cost or the actual cost of burying the distribution line (which will not be determined until completion of the project). The City and Idaho Power agree that the total estimated cost at this time for burying the distribution line (including an interest rate of 7.8% over a term of approximately three years) is about \$342,206. *Id.* at ¶¶ 9-10.

To pay for the cost of burying the distribution line, Idaho Power consents and the City agrees to an increase in Idaho Power's franchise fee for electric service from one percent (1%) to three percent (3%). *Id.* at ¶¶ 11-13; *Idaho Code* § 50-329A(1)(a). Beginning on or about April 1, 2005, the City agrees to pay at least two-thirds (66.67%) of its franchise fee each quarter to Idaho Power for burying the distribution line. *Id.* at ¶ 13. The parties further agree that the 3% franchise fee will remain in place at the City's request until December 31, 2010. Once the cost of burying the distribution line on Eagle Road is reimbursed, the City may use subsequent franchise fees to defray the cost of burying additional Idaho Power distribution lines within the City. *Id.* at ¶ 11. The City agrees to take all actions necessary to reduce the franchise fee from 3% to 1% effective December 31, 2010. *Id.* at ¶ 12.

The parties assert the Settlement is a reasonable resolution of the complaint and is in the public interest. *Id.* § V. More specifically, the parties note that on November 8, 2004, the City convened a public hearing for the purpose of reviewing and taking public comments on the proposed alignment agreed to by the parties in Exhibit 1. Following the public hearing, the City Council voted to approve the proposed aerial alignment. *Id.* at § II.

The parties recommend the Commission accept this Stipulation without material change or condition and without further delay. If the Commission adopts the Stipulation without material change no party shall attempt to further litigate or appeal the issues resolved by this Stipulation. *Id.* § III.

COMMISSION FINDINGS AND DISCUSSION

The Commission is not bound by any settlement stipulation reached by the parties. Pursuant to our Rule 276, the Commission will independently review this settlement proposal to determine whether the settlement is just, fair and reasonable, and in the public interest, or otherwise in accordance with law and regulatory policy. The Commission may accept the settlement, reject the settlement, or add additional conditions under which the settlement will be accepted. IDAPA 31.01.01.276.

After reviewing the evidence produced at our technical hearing, the public comments and the terms of the Stipulation, the Commission adopts the Settlement Stipulation. We find the proposed Settlement, including the alignment of the transmission line and the burial of one distribution line, is fair and reasonable, and in the public interest. The approved alignment is shown in Attachment 1 to this Order. The Commission further finds that the terms of the Settlement represent a reasonable resolution of this dispute.

The advantages to the City of the stipulated alignment over the By-pass route or the State Street route are numerous. First, the new alignment places the transmission line away from residential areas of the City – a concern expressed at our public hearing. Second, the line avoids areas identified by the City as scenic view corridors, most notably the eastern side of the By-pass, the intersection of the By-pass and Eagle Road, and the Jackson Square area of State Street. Third, the agreement to bury the distribution line on the east side of Eagle Road allows the Company to utilize shorter poles, thereby further preserving scenic views. Utilizing a new pathway on the south side of the By-pass unencumbered with existing utility facilities also allows the Company to use shorter 63-foot poles. Finally, the Stipulation provides for the burial of other existing distribution lines in the City through 2010.

We further find that although the City presented conflicting testimony, there is substantial and competent evidence that construction of the subject transmission line is necessary to serve western Ada County. Although the City challenged the need to construct this line, we find Idaho Power witness David Sikes' testimony persuasive. In particular, he testified that the existing 69-kV line currently supplying the Lansing and Star substations is inadequate to reliably serve the projected load during the summer of 2005. Tr. at 525. On rebuttal, he noted that loads in August 2004 were approaching critical levels. He argued that it was imperative that this

transmission line upgrade be made “to assure service reliability and to prevent the potential occurrence of outages during the summer of 2005.” *Id.*

We further find that upgrading the existing transmission line is not just a short-term, temporary solution. As Mr. Sikes explained, there was confusion about what “temporary” means in the realm of transmission planning. He explained that completing this line will serve two primary purposes. First, this line will supply increased voltage support and capacity to the new Star substation. Extending the 138-kV transmission line from the Eagle substation to the Star substation “is the lowest cost and most expedient solution to provide that near-term need.” Tr. at 549. In this particular case, the “temporary” need for this line is immediate and intended to satisfy the Company’s transmission requirements for at least 10 years. Second, this line will serve as a secondary source of power for the City of Eagle by creating a redundant supply loop. Tr. at 550-51. Consequently, this line will improve the reliability of electric service to the entire Eagle area. Providing reliable service and avoiding outages is in the public interest.

We also find that the Settlement Stipulation is consistent with the intent of the Underground Conversion of Utilities Law, *Idaho Code* § 50-2503. This section authorizes cities to convert overhead electric facilities to underground locations. Here the costs of burying distribution lines are being recovered from Eagle residents pursuant to local decisions and actions.

Although this process has been difficult and contentious at times, this case is another example of the importance of a public hearing. In particular, it was the testimony received at a public hearing that precipitated investigation of the new alignment proposed in the Stipulation. We appreciate the efforts and contributions of the parties in reaching this settlement. We commend Idaho Power for its willingness to work with and be responsive to the communities it serves.

Finally, we note that this case should serve as a reminder to utilities that they should monitor and participate in local land use planning activities. In particular, *Idaho Code* § 67-6508(h) requires that city and county comprehensive plans consider and identify “utility transmission corridors” and other public facilities. For purposes of transmission planning, utilities must advise local governments that the construction of electric transmission lines normally entails tall poles and structures. We also encourage cities and counties to be realistic in designating transmission corridors within their areas. It may not be enough to simply designate

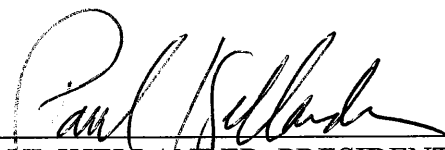
that public streets and road right-of-ways will serve as transmission corridors. Aerial transmission lines are the most cost-effective construction method and represent 99% of all transmission line miles in the nation. Tr. at 305.

ORDER

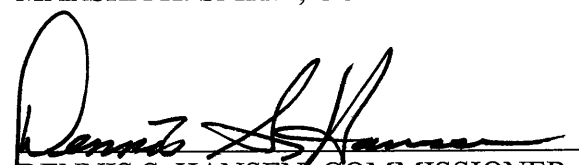
IT IS HEREBY ORDERED that the parties' Joint Motion to Adopt the Settlement Stipulation is granted. The Commission adopts and approves the Settlement Stipulation.

THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. IPC-E-04-4 may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. IPC-E-04-4. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

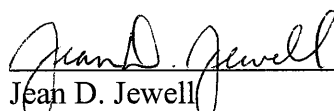
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 19th day of November 2004.


PAUL KJELLANDER, PRESIDENT

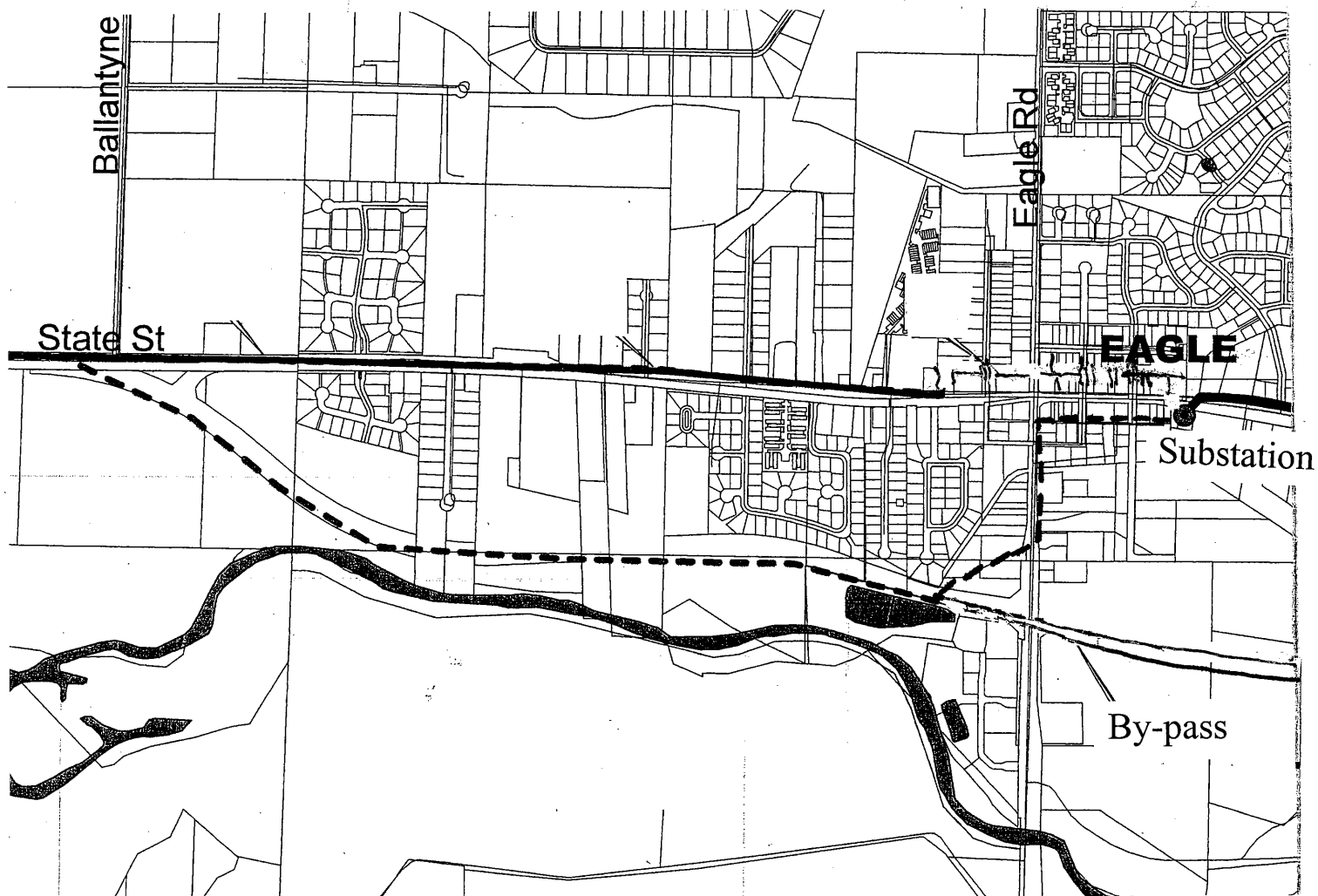

MARSHA H. SMITH, COMMISSIONER


DENNIS S. HANSEN, COMMISSIONER

ATTEST:


Jean D. Jewell
Commission Secretary

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--- Approved Alignment

ATTACHMENT 1
ORDER NO. 29634
CASE NO. IPC-E-04-4